

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

GUILLERMO RODRIGUEZ GARCIA,

Petitioner,

v.

No. 24-cv-01115-KG-LF

No. 22-cr-1125-KG-LF

UNITED STATES OF AMERICA,

Respondent.

**ORDER DIRECTING ANSWER AND
DENYING MOTION TO APPOINT COUNSEL**

This matter is before the Court on Petitioner Guillermo Rodriguez Garcia's Motion to Vacate Convictions Under 28 U.S.C. § 2255 (CV Doc. 1; CR Doc. 40) (Habeas Motion). Also before the Court is his Motion to Appoint Counsel (CV Doc. 2). Petitioner challenges his federal conviction based on, inter alia, ineffective assistance by counsel. Having reviewed the Habeas Motion pursuant to Habeas Corpus Rule 4, the Court determines the claims must be resolved on a full record. The Court will order the United States to respond to the Habeas Motion within 60 days of entry of this Order.

As to the remaining motion, there is no constitutional right to counsel in a habeas proceeding. *See Coronado v. Ward*, 517 F.3d 1212, 1218 (10th Cir. 2008). Unless and until an evidentiary hearing is held, "[t]he decision to appoint counsel is left to the sound discretion of the district court." *Engberg v. Wyoming*, 265 F.3d 1109, 1122 (10th Cir. 2001). Factors guiding such discretion include "the merits of the litigant's claims, the nature of the factual issues raised in the claims, the litigant's ability to present his claims, and the complexity of the legal issues raised by the claims." *Williams v. Meese*, 926 F.2d 994, 996 (10th Cir. 1991). Considering these factors,

the Court is not persuaded that habeas counsel should be appointed at this time. The 28 U.S.C. § 2255 claims are presented in a clear, cogent manner and are not overly complex. Petitioner also provides no factual detail regarding an inability to present the claims. The Court will therefore deny the Motion to Appoint Counsel (CV Doc. 2) without prejudice.

IT IS ORDERED that the United States must **ANSWER** the Habeas Motion within sixty (60) days of entry of this Order; and Petitioner may file an optional reply within thirty (30) days after the answer is filed.

IT IS FURTHER ORDERED that Petitioner's Motion to Appoint Counsel (CV Doc. 2) is **DENIED without prejudice**.

IT IS FINALLY ORDERED that the Clerk's Office shall **MAIL** a copy of this Order to Petitioner and shall include the inmate number on the mailing envelope.


UNITED STATES MAGISTRATE JUDGE